



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

December 11, 1995

Ms. Maria Elena Ramon
Director, Open Government &
Fair Employment Practices Section
Legal Services Division
Texas General Land Office
1700 North Congress Avenue
Austin, Texas 78701-1495

OR95-1387

Dear Ms. Ramon:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. We assigned your request ID# 36140.

The General Land Office ("GLO") received several open records requests from the same requestor for information regarding certain current and former employees of the GLO, including herself. You contend that section 552.103 of the Government Code excepts from disclosure most of the requested information. You also contend that sections 552.107 and 552.111 except from disclosure the information contained in the investigatory file requested.

We conclude that section 552.103(a) excepts from disclosure the documents you labeled "DT-2" and "DT-5" and the four exhibits that you identify as contained in the investigation file regarding Ms. Tovar's complaint.¹ To secure the protection of section 552.103(a), a governmental body must demonstrate that litigation is pending or reasonably anticipated and that the requested information relates to that litigation. *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.);

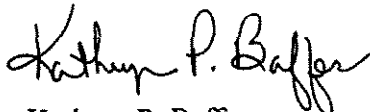
¹You submitted to this office a representative sample of the documents contained in the investigation file. In reaching our conclusion here, we assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision No. 499 (1988) at 6, 497 (1988) at 4. We do not address any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

Open Records Decision No. 551 (1990) at 5. You have received a notice of a Charge of Discrimination filed with the Equal Employment Opportunity Commission ("EEOC") by the requestor in this case. Furthermore, the requestor has filed suit against the Texas Employment Commission and the GLO seeking judicial review of a decision to deny her unemployment compensation. The information labeled "DT-2" and "DT-5" clearly relates to the EEOC complaint. The four exhibits that you identify as contained in the investigation file relate to either the EEOC complaint or unemployment compensation matter. Therefore, you may withhold this information under section 552.103.

On the other hand, we conclude that section 552.103 of the Government Code does not except from disclosure the remainder of the information you submitted for review. The governmental body has the burden of establishing that particular information is related to the litigation unless the information demonstrates on its face that it is related to the litigation. See Open Records Decision No. 551 (1990) at 5. Furthermore, information cannot be withheld under section 552.103 if the opposing party in the litigation has previously had access to it; absent special circumstances, once information has been obtained by all parties to the litigation, through discovery or otherwise, no section 552.103(a) interest exists with respect to that information. Open Records Decision Nos. 525 (1989) at 4, 511 (1988) at 5. In this case, you have not demonstrated, nor do the documents demonstrate on their face, how all of the remainder of the information you submitted for review relates to either the EEOC complaint or the unemployment compensation matter. Moreover, the opposing party in the litigation has had access to those portions of the remainder of the information that appear to be related to the litigation. We have marked the documents accordingly.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Kathryn P. Baffes
Assistant Attorney General
Open Records Division

MAR/KPB/ch

Ref.: ID# 36140

Enclosures: Marked documents

cc: Ms. Dora O. Tovar
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(w/o enclosures)